U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38181713

Date: AUG. 22, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality Act (the Act) Section 203(b)(5), 8 U.S.C. § 1153(b)(5) (2019).[1] This fifth preference (EB-5) classification makes immigrant visas available to aliens who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the minimum amount of capital had been made available to the business(es) most closely responsible for job creation. FOD also determined that the business plan was not complaint with *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998) and that the record did not demonstrate the requisite number of jobs will be created. The Petitioner appeals FOD's denial to us, asserting that he has established eligibility for the EB-5 classification. He submits an appellate brief and additional documents in support of his appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii). An investor seeking EB-5 classification must show that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in section 203(b)(5) of the Act, and adding significant new integrity provisions. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed his petition in November 2019, the relevant law then in existence governs this appellate adjudication.

employees. 8 C.F.R. § 204.6(j)(4). An NCE may be relied upon by multiple alien investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of investing the required amount, and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a new commercial enterprise will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

A petition is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the NCE. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. at 213. Mere conclusory assertions, however, do not enable USCIS to determine whether the job-creation projections are any more reliable than hopeful speculation. *Id.* Most importantly, the business plan must be credible. *Id.*

II. ANALYSIS

The Petitioner asserts eligibility based on an investment of $500,000 in [redacted] LP, the NCE.[2] The NCE proposed to pool up to $7 million from up to 14 immigrant investors to provide financing to [redacted] LLC, the job creating entity (JCE). The JCE, in turn, planned to use these funds in conjunction with other financing to renovate and rebrand the [redacted] into a luxury micro-unit hotel.

On appeal, the Petitioner maintains that he has shown his eligibility for the EB-5 classification and offers additional evidence, including the NCE's updated business plan, as well as wire reports, bank statements, the JCE's balance sheet, and project related invoices. He asserts, among other things, that the project is moving forward as described in the updated business plan and that the updated project timeline does not materially affect the viability of the project or affect his eligibility for receiving credit for job creation.

Upon review of the record, and as set forth below, we agree with FOD's conclusion that the Petitioner has not provided a business plan that is both comprehensive and credible; therefore, he has not

[2] The Petitioner asserted that the project is located in a targeted employment area and, therefore, the requisite amount of capital investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2).

demonstrated that the NCE will likely create full-time positions for at least 10 qualifying employees within two years as projected in the business plan and economic impact analysis. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

A. Business Plan

The Petitioner does not specifically document, and the record does not show, that the NCE created any direct jobs. Therefore, in relation to indirect job creation, FOD denied the petition, in part, based on a determination that the business plan in the record was not comprehensive and credible and that it was not compliant with *Matter of Ho*. *See Matter of Ho*, 22 I&N Dec. at 213.[3] FOD also found that the record did not demonstrate that the requisite number of jobs would be created using reasonable methodologies. We agree.

As stated above, prospective job creation must be demonstrated through submission of a comprehensive business plan. *Matter of Ho* explained that "[a] comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives." *Matter of Ho*, 22 I&N Dec. at 213. It also stated that the plan "should list the required permits and licenses obtained" and that "[i]t should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." *Id.*

Here, the evidence in the record does not substantiate the construction timeline, which in turn does not demonstrate that the project will likely create a sufficient number of jobs for the Petitioner and other investors seeking EB-5 classification within the required two-year time frame. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also* 8 C.F.R. § 204.6(g) (providing that each individual investor's investment must result in the creation of at least 10 full-time positions for qualifying employees).

As FOD noted, the construction timeline has changed multiple times. According to the business plan submitted with the initial filing in November 2019, the project was estimated to cost $16 million total and was expected to create 159.6 jobs within 2.5 years. The renovations were scheduled to begin in November 2019 and finish approximately 11 months later in October 2020. Yet, in a July 30, 2024, status report letter from the Petitioner's contractor submitted in response to FOD's Notice of Intent to Deny (NOID), the contractor revealed that construction had stopped in March 2021, approximately six months after the scheduled completion date, and that it had not yet resumed over three years later.[4] The letter also stated that "[a]t the time construction was stopped no significant architectural construction had begun" and that "[p]rior to resuming work on site, building permit approval . . . will need to be completed." An updated project timeline indicated construction would begin again in March 2025 and finish approximately eight months later in October 2025.

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[3] As FOD noted, changes to the project's timeline and financial structuring could be considered a material change. However, for the reasons discussed in this decision, we agree with FOD's conclusion that the Petitioner has not established his eligibility for EB-5 classification because he has not shown he satisfies the job creation requirements. Therefore, for the purposes of our appellate adjudication, we will not discuss the issue of material change further and will reserve the issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

[4] An updated [redacted] chart outlining the revised timeline of the project noted that the "[c]onstruction pause [was] prompted by the pandemic and to restructure the funding of the project."

On appeal, the timeline changed yet again when the Petitioner submitted a new, updated business plan now stating that the renovation would restart in July 2025 and finish approximately 11 months later in May 2026. At this point, the updated business plan anticipated a delay of over five years to complete the renovations as compared to the March 2019 business plan. This timeline also assumed all necessary permits and approvals would have been granted prior to July 2025. But, even in this, the Petitioner has submitted little documentation showing any steps taken towards obtaining these preliminary approvals, including the required building permit mentioned in the contractor letter.

Additionally, we note that the updated business plan states renovation is scheduled to restart after, among other things, a "capital/funding strategy overhaul." It states that $8.5 million had already been paid to the contractor to date, and that "[a]n additional $25M is anticipated to be spent on the reconstruction of our hotel, with much of this going towards job creation." But, the Petitioner does not explain how the project will achieve such additional funding or how it will be used in the project. He also does not explain why the project, which was originally estimated to cost $16 million, is now expected to cost a total of approximately $33.5 million. As FOD noted, the evidence in the record, including the contractor letter and photographs, reflects minimal past progress on the renovation. And, even if we were to accept that the substantially increased cost of the project was reasonable or necessary, the Petitioner still has not offered documentation verifying any likely or actual commitment of this additional financing, which would be necessary to complete the renovation. Consequently, the documentation submitted does not sufficiently demonstrate that the project will be completed or that the necessary number of jobs will be created timely. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also* 8 C.F.R. § 204.6(g).

The Petitioner asserts on appeal that "with more than $8 million spent on the development of the Project thus far, enough impacts have created a sufficient number of jobs for the Petitioner during the initial construction period of the Project." However, as discussed above, the business plan is not credible or *Matter of Ho* compliant to reliably demonstrate the potential creation of indirect jobs. The Petitioner also has not shown through reasonable methodologies that the requisite number of jobs will be created within two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). As FOD noted, the economic impact analysis submitted by the Petitioner relied on the initial business plan for its model inputs. However, due to the multiple changes in the projected timelines and financing, the Petitioner has not shown that the specific job creating information from the initial business plan, which was used as the basis for the economic model, is credible. Therefore, without having shown that the NCE is likely to create at least 10 jobs for each immigrant investor within two years, the Petitioner has not met his burden to show his eligibility for EB-5 classification. *See* 8 C.F.R. § 204.6(g)(1), (j)(4)(i); *Matter of Ho*, 22 I&N Dec. at 213.

B. Capital at Risk

FOD determined the record did not establish that the required minimum amount of capital had been made available to the business(es) most closely responsible for job creation. Because the Petitioner did not satisfy the job creation requirements and the matter is dismissible on that basis alone, we decline to address and reserve FOD's determination that the Petitioner did not satisfy the capital at risk requirement, as well as any other eligibility issues. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

In light of the above, the Petitioner has not presented a comprehensive or credible business plan showing that the NCE has created or will likely create at least 10 qualifying full-time positions within two years for each immigrant investor seeking EB-5 classification. Accordingly, the Petitioner has not demonstrated, by a preponderance of the evidence, his eligibility for the EB-5 classification.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.